

Brian J. Ward, Esq. (SBN 244387)
Erin L. Powers, Esq. (SBN 245148)
TRIAL LAWYERS FOR JUSTICE
877 South Victoria Avenue, Suite 201
Ventura CA 93003
Tel: 310-855-3727
Fax: 310-855-3595
Email: teamojai@tl4j.com

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JUN 05 2023

[Signature]
By: Michelle Gomez-Casillas, Deputy

Attorneys for Plaintiffs, GEORGE FRANCO
and KARLA FRANCO

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

GEORGE FRANCO and KARLA FRANCO

CASE NO. **CIV SB 2312934**

Plaintiffs,

vs.

SAFETY-KLEEN INC, A DELAWARE
CORPORATION; THE ARMAKLEEN
COMPANY, A DELAWARE
CORPORATION; CHURCH & DWIGHT CO.
INC., A DELAWARE CORPORATION;
CLEAN HARBORS INC., A
MASSACHUSSETS CORPORATION; AND
DOES 1 THROUGH 100, INCLUSIVE

Defendants

**COMPLAINT FOR TOXIC INJURIES
ASSERTING CAUSES OF ACTION FOR:**
(1) NEGLIGENCE;
(2) STRICT LIABILITY - WARNING
DEFECT;
(3) STRICT LIABILITY - DESIGN
DEFECT;
(4) FRAUDULENT CONCEALMENT;
(5) BREACH OF IMPLIED
WARRANTIES;
(6) LOSS OF CONSORTIUM

THE PARTIES

1. At all material times hereto, Plaintiffs, GEORGE FRANCO and KARLA FRANCO, have been residing in the State of California as husband and wife.

2. Plaintiffs are informed and believe and thereon allege that Defendant, Safety-Kleen Inc., is a Delaware corporation, which at all material times hereto, has been doing business in the County of San Bernardino, State of California.

1 3. Plaintiffs are informed and believe and thereon allege that Defendant, The
2 ArmaKleen Company is a Delaware corporation, which at all material times hereto, has been
3 doing business in the County of San Bernardino, State of California.

4 4. Plaintiffs are informed and believe and thereon allege that Defendant, Church &
5 Dwight Co. Inc., is a Delaware corporation, which at all material times hereto, has been doing
6 business in the County of San Bernardino, State of California.

7 5. Plaintiffs are informed and believe and thereon allege that Defendant, Clean
8 Harbors Inc. is a Massachusetts corporation, which at all material times hereto, has been doing
9 business in the County of San Bernardino, State of California.

10 6. The true names and capacities of Defendants Does 1 through 100 are unknown to
11 Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will amend this
12 complaint to state the true names and capacities of said fictitious defendants when they have
13 been ascertained. Plaintiff is informed and believes and thereon alleges that Defendants Does 1
14 through 100 are in some manner responsible for the occurrences herein alleged, and that
15 Plaintiffs' damages as herein alleged were proximately caused by their conduct.

16 7. Plaintiff is informed and believe and based thereon allege that, at all times material
17 hereto, each of the Defendants, including the fictitiously named Defendants, was acting in an
18 individual, corporate, partnership, associate, parent-subsiidiary, successor-predecessor,
19 conspiratorial or other capacity or as the agent, employee, co-conspirator, and/or alter ego of its
20 co-defendants, and in doing the acts herein alleged, was acting within the course and scope of
21 its authority as such parent, successor, partner, associate, agent, employee, co-conspirator, or
22 alter ego, and with the permission, consent, knowledge, authorization, ratification and direction
23 of its co-defendants, including all fictitiously named defendants.

24
25 **GENERAL ALLEGATIONS**

26 8. From about 1990 through the present, Plaintiff, GEORGE FRANCO, worked as a
27 car mechanic at his automobile repair shop in Southern California. Plaintiff is informed and
28

1 believes and thereon alleges that the injuries from which Plaintiff, GEORGE FRANCO suffers,
2 and which are the subject of this action, were sustained in the course of Plaintiff's work as a
3 mechanic in San Bernardino, California.

4 9. In the course of and throughout Plaintiff's employment in San Bernardino,
5 California, Plaintiff, GEORGE FRANCO, worked with ArmaKleen Company and Safety-Kleen
6 products and was exposed to chemicals from those products.

7 10. Safety-Kleen Corporation is the world's largest recycler of automotive and
8 industrial fluid wastes. Safety-Kleen offers a Parts Washer Service, Fluid Recovery Service, Oil
9 Recovery Service, Paint Refinishing Service, Dry Cleaner Service, and Imaging Service.

10 11. The Safety-Kleen parts washer machines are all essentially a "sink-on-a-drum."
11 The machines consist of a tank partially filled with Safety-Kleen 105 Solvent, a pump to pump
12 solvent through a hose with a brush attached to it, and a sink in which the operator scrubs parts
13 to degrease and clean them with the recycled solvent.

14 12. Unlike most petroleum products, Safety-Kleen 105 Solvent is not a refined
15 petrochemical product but is rather hazardous waste; it is a recycled petroleum product that is
16 contaminated with multiple carcinogens and other toxic chemicals not ordinarily found in refined
17 petroleum solvents.

18 13. The primary constituent of Safety-Kleen 105 Solvent is mineral spirits, which is
19 a complex mixture of aromatic and aliphatic hydrocarbons obtained from the distillation of
20 crude oil. To this Safety-Kleen adds an antistatic agent and a green dye. The product is called
21 "105 Solvent" because its flashpoint is supposedly 105° Fahrenheit, which would render it a
22 combustible rather than a flammable material under various regulations.

23 14. Safety-Kleen 105 Solvent is contaminated with multiple carcinogenic chemicals,
24 including benzene, perchloroethylene, trichloroethylene, methylene chloride, chlorinated
25 benzenes, and polycyclic aromatic hydrocarbons.

1 15. Benzene is a human carcinogen that causes leukemia and other cancers at
2 concentrations as low as 1 part per million (ppm).

3 16. Benzene occurs naturally in crude oil and is therefore found in mineral spirits in
4 varying amounts depending on the quality of the distillation process. Benzene has been
5 detected in the virgin mineral spirits that Safety-Kleen purchases at concentrations from “not
6 detected” up to well over one hundred parts per million.

7 17. Benzene is also introduced into recycled Safety-Kleen 105 Solvent by Safety-
8 Kleen's automotive customers. For years benzene has been used as an antiknock agent additive
9 in gasoline. When automotive shops clean carburetors and other automobile parts using Safety-
10 Kleen 105 Solvent, benzene is introduced into the used solvent, which is then recycled and
11 delivered anew to customers.

12 18. Safety-Kleen collects used Safety-Kleen 105 Solvent from its California
13 customers and supplies them with recycled solvent. The used solvent is transported to the local
14 service center, where it is put in a storage tank with used solvent from other customers. The
15 solvent is then pumped into a tanker truck and shipped to Safety-Kleen's recycle center in
16 Reedley, California.

17 19. At the recycle center, the used solvent is pumped into a settling tank, where water,
18 dirt and heavy oils settle to the bottom of the tank and are removed. The rest of the material is
19 pumped into a crude evaporator. As the evaporator is heated in a vacuum, volatile chemicals
20 evaporate, rise, and go into a condensation unit where they cool and re-condense. The first
21 components to evaporate are low-boiling aromatics, including benzene. When benzene
22 recondenses on the other side of the column it could be extracted from the solvent by various
23 means, but Safety-Kleen does not extract benzene or any of the other toxic contaminants of the
24 product. Safety-Kleen just continues heating the liquid in the evaporator until all the volatile
25 components evaporate and recondense. The recondensed material, which is called recycled
26 solvent (and improperly called “clean” solvent) is then delivered to customers.
27
28

1 20. The process continues on and on in what has been called a "closed-loop" system.
2 However, not all of the solvent or its carcinogenic contaminants remains in the "closed-loop"
3 system." Unfortunately, large amounts of the solvent and its carcinogenic components is inhaled
4 into the lungs of operators of the parts washer machines and is absorbed through their skin into
5 their bloodstream.

6 21. As a result of the ordinary use of the Safety-Kleen parts washer machine, workers
7 inhale toxic vapors from Safety-Kleen 105 solvent aerosols which form as the solvent flows
8 through the hose into the air in an open system, and from vapors which form as volatile
9 components evaporate in the air. Also as a result of the ordinary and intended use of the machine,
10 solvent splashes onto the skin of workers operating the machine. The parts washer machines are
11 commonly used in industry, often in conjunction with an air hose, which blow-dries parts which
12 have been degreased in the machine. It has also been a customary practice in industry for workers
13 to wash their hands using the parts washer machine.

14 22. Safety-Kleen has known for years that its "recycled" Safety-Kleen 105 Solvent
15 contains benzene.

16 23. Safety-Kleen has also known for years that benzene and other chlorinated
17 compounds found in recycled Safety-Kleen 105 Solvent cause cancer and other serious health
18 risks and diseases.

19 24. In the early 1990s, Paul Dittmar, Safety-Kleen's Product and Process Development
20 Manager, was assigned the task of determining the extent of the solvent contamination problem
21 and identifying remedial technologies. In a memo addressed to the company's general counsel,
22 Mr. Dittmar concluded that the solvent contamination problem was a major problem. He
23 determined that a number of different technologies existed to resolve the problem, but that the
24 best and simplest technology was fractional distillation -- technology which has been used to
25 refine crude oil since the turn of the century.
26
27
28

1 25. Mr. Dittmar determined that the use of such technology would totally eliminate
2 benzene from the recycled product and reduce the chlorinated content of the solvent by 90%. Mr.
3 Dittmar, who is not only a chemist but also holds a Masters Degree in Business Administration,
4 then proceeded to determine the cost of implementing fractional distillation technology at Safety-
5 Kleen's domestic recycling centers. He determined that the cost of installation of the fractional
6 distillation equipment would only be about \$1 million for each of the company's half-dozen
7 recycling facilities and that the additional cost of processing the solvent would be about 2 to 4
8 cents per gallon.

9
10 26. Although Safety-Kleen was aware that its recycling process was defective and that
11 it could be easily remedied for a capital expenditure of \$1 million for each of its half-dozen
12 recycling facilities (about ½ of one percent of its annual gross revenues) and a cost of about 3
13 cents per gallon (which could easily have been passed on to its customers), Safety-Kleen did not
14 install fractional distillation equipment at its recycle centers.

15 27. Although Safety-Kleen was aware that the benzene and chlorinated compounds in
16 its recycled Safety-Kleen 105 Solvent caused cancer and other health problems and diseases, and
17 knew of a cost-efficient method of removing these cancer-causing substances from Safety-Kleen
18 105 Solvent, Safety-Kleen instead chose to continue marketing its solvent without warnings
19 regarding the cancer hazards of the product, and without remedying such hazards.

20 28. Safety-Kleen did not list carcinogens present in Safety-Kleen 105 Solvent if the
21 carcinogen was at levels below 0.1 percent, in a further effort to lead customers and users to
22 believe the product was safe, when in fact it was not.

23 29. Safety-Kleen falsely told some people that its Safety-Kleen 105 Solvent contains
24 no benzene, and told other people benzene was not an "ingredient" of Safety-Kleen 105 Solvent
25 to mislead people into believing there was no benzene in Safety-Kleen 105 Solvent. To further
26 this, for many years Safety-Kleen chose not to list benzene on its parts washer machine labels to
27 further convince customers its product contained no benzene.
28

1 30. Without possessing any scientific or medical proof to establish the purported fact,
2 Safety-Kleen told customers that the amount of chlorinated compounds in Safety-Kleen 105
3 Solvent was so minuscule that it did not create any health hazards.

4 31. Safety-Kleen was aware of the toxic hazards of its 105 Solvent as demonstrated
5 by the fact that Safety-Kleen required its employees who worked with the 105 Solvent to wear
6 protective gear including a full chemical suit, gloves, boots and a respirator, and mandated
7 medical testing for liver, kidney and blood disease every one to two years for those employees.

8 32. Safety-Kleen's recycling process increased the levels of chlorinated compounds
9 (e.g., perc) in Safety-Kleen 105 Solvent that Safety-Kleen distributed for use by its customers,
10 thereby making it more harmful and toxic.

11 33. Safety-Kleen's own products contributed to the contamination of Safety-Kleen
12 105 Solvent, thereby making it more toxic than it otherwise would have been.

13 34. Safety-Kleen's only concern regarding issues with its 105 Solvent (e.g., receiving
14 off-spec material below the flashpoint) was how such would affect Safety-Kleen's liability
15 position, rather than a concern for the health and safety of its customers or their employees.

16 35. In preparing its MSDS's, Safety-Kleen's only concern was that from a marketing
17 perspective, listing certain carcinogenic ingredients of its 105 Solvent on MSDS's would make
18 marketing the product more difficult. Safety-Kleen gave no consideration to the health and safety
19 of Safety-Kleen's customers or of their right to know of carcinogens in Safety-Kleen 105 Solvent.

20 36. For marketing reasons, Safety-Kleen wanted to get levels of carcinogens (e.g.,
21 perc) below OSHA levels so Safety-Kleen did not have to list those carcinogens on its material
22 safety data sheets, but Safety-Kleen decided not to spend the money to accomplish this, because
23 Safety-Kleen decided that it would not achieve a significant marketing benefit by being able not
24 to list carcinogens on the material safety data sheet for Safety-Kleen 105 Solvent.

25 37. Safety-Kleen could have removed perchloroethylene, benzene, and other
26 chlorinated compounds from Safety-Kleen 105 Solvent for nominal cost (2-4 cents per gallon)
27
28

1 through fractional distillation, but chose not to do so unless and until governmental agencies
2 required Safety-Kleen to do such. This decision was made because Safety-Kleen's marketing
3 department determined that removal of these compounds would not provide a sufficient
4 marketing benefit to justify making the product safe.

5 38. Although detergent-based technology was available, affordable and marketable,
6 Safety-Kleen did not convert any of its solvent tanks to the less-toxic water-based cleaner until
7 required to do so by law.

8 39. Safety-Kleen is well aware that its 105 Solvent has contaminated multiple sites
9 where its recycle facilities are located across the country.

10 40. Multiple enforcement actions and fines have been imposed upon Safety-Kleen in
11 California and elsewhere due to environmental non-compliance issues and Safety-Kleen's
12 contamination of different sites in the United States.

13 41. As a condition of settling a leukemia case in the 1980s, (the Junker case), Safety-
14 Kleen required that all evidence and records be sealed by the court and destroyed by counsel to
15 conceal information, including scientific data, that had been discovered and developed during
16 the course of the litigation.

17 42. Despite receiving hundred of claims that Safety-Kleen 105 Solvent has caused
18 blood related cancers, other cancers, and systemic toxicity resulting in organ failure and death,
19 Safety-Kleen continues to market its 105 Solvent today.

20 43. In the course of his work of employment in California, Plaintiff, GEORGE
21 FRANCO, was exposed to toxicologically significant levels of these chemicals.

22 44. As a direct and proximate result of said exposure to said toxic chemical products,
23 Plaintiff, GEORGE FRANCO, sustained serious injuries to his internal organs, including
24 meningioma.

25 ///

26 ///

1 45. As medical treatment for his meningioma, Plaintiff, GEORGE FRANCO, has been
2 hospitalized and undergone surgery and other treatments and will require ongoing medically
3 necessary and lifesaving treatment.

4 **TOLLING OF STATUTE OF LIMITATIONS**

5 **Appreciable Injury and Diagnosis Postdating Exposure**

6 46. Plaintiff, GEORGE FRANCO, was first diagnosed with meningioma on or about
7 June 9, 2021. Prior to said time Plaintiffs did not discover, and could not reasonably have
8 discovered, that Plaintiff, GEORGE FRANCO, had been injured and was suffering from
9 meningioma, the toxic nature of said injuries and disease, or their occupational cause. The
10 pathological effect of said disease occurred without perceptible trauma and Plaintiffs were
11 blamelessly ignorant of its cause. It was not until about June 9, 2021, that Plaintiffs were even
12 aware that GEORGE FRANCO, had sustained any appreciable injury.

13 **IGNORANCE OF CAUSE OF DISEASE**

14 47. At the time Plaintiff, GEORGE FRANCO, was diagnosed with meningioma on
15 or about June 9, 2021, and continuing thereafter until the present date, no physician ever told
16 Plaintiff, GEORGE FRANCO, what the cause of Plaintiff's meningioma was or that Plaintiff's
17 meningioma even had a cause.

18 **SUSPICION OF CAUSE OF DISEASE**

19 48. The first time Plaintiffs suspected that Plaintiff, GEORGE FRANCO's
20 meningioma might be occupationally related was on or about June 9, 2021.

21 **IGNORANCE OF IDENTITY OF INJURY-CAUSING HAZARDOUS SUBSTANCES**

22 49. Notwithstanding their diligent efforts, at no time even until the present date did
23 Plaintiffs personally ascertain the identity of those chemical products which caused Plaintiff
24 GEORGE FRANCO's meningioma; nor did Plaintiffs personally ascertain any ingredients or
25 contaminants of the products to which Plaintiff, GEORGE FRANCO, was exposed at work
26 that caused Plaintiff 's meningioma; and to this very date, Plaintiffs personally remain ignorant
27
28

1 of the identity of hazardous substances to which Plaintiff, GEORGE FRANCO was exposed at
2 work that caused Plaintiff, GEORGE FRANCO's meningioma.

3 **FRAUDULENT CONCEALMENT OF TOXIC HAZARDS BY DEFENDANTS**

4 50. At all material times hereto, Defendants fraudulently concealed from Plaintiffs
5 material facts concerning the nature of the chemicals to which Plaintiff, GEORGE FRANCO,
6 was exposed.

7 51. At all material times hereto, Defendants fraudulently concealed the toxic hazards
8 of their chemical products from Plaintiffs, the hazards of the conditions under which Plaintiff,
9 GEORGE FRANCO, was exposed to said chemical products, that GEORGE FRANCO, was
10 being exposed to and suffering toxic injuries from said chemical products, and the cause of
11 Plaintiff, GEORGE FRANCO's injuries and occupational disease.

12 52. At all material times hereto, Defendants fraudulently concealed from Plaintiffs that
13 their products either were carcinogens, contained carcinogenic ingredients, or contained
14 carcinogenic contaminants as a result of manufacturing processes.

15 53. At all material times hereto, Defendants failed to disclose to Plaintiffs toxic,
16 hazards of their products, which Defendants were by law required to disclose to Plaintiff,
17 GEORGE FRANCO, pursuant to the Hazard Communication Standard.

18 54. Defendants' concealment was sufficiently complete that Plaintiffs did not know,
19 nor in the exercise of reasonable care could have known earlier than June 9, 2021 of Defendants'
20 culpability, that Plaintiff, GEORGE FRANCO, had sustained toxic injuries, that chemicals to
21 which GEORGE FRANCO, was occupationally exposed had caused Plaintiff, GEORGE
22 FRANCO's meningioma, and other injuries, or that Plaintiffs had causes of action arising from
23 Plaintiff, GEORGE FRANCO's injuries.

24 ///

25 ///

26 ///

FIRST CAUSE OF ACTION FOR NEGLIGENCE

(By Plaintiff, GEORGE FRANCO, Against All Named Defendants and Does 1-100)

55. Plaintiffs refer to paragraphs 1 through 54 and, by this reference, incorporate said paragraphs hereat as though set forth in full.

56. As chemical manufacturers and distributors, Defendants owed Plaintiff a legal duty to exercise due care in importing, producing, and distributing the foregoing chemical products to Plaintiff's place of employment in San Bernardino County, California.

57. Defendants negligently and carelessly imported, produced, and distributed the foregoing chemical products to Plaintiff's place of employment in San Bernardino County, California, where Plaintiff, GEORGE FRANCO, was exposed to said toxic chemical products.

58. Defendants also failed to adequately warn Plaintiff, GEORGE FRANCO of the hazards of said toxic chemical products and failed to provide adequate instructions to Plaintiff, GEORGE FRANCO for the safe handling and use of said toxic chemical products.

59. Plaintiff, GEORGE FRANCO, was exposed to each of the foregoing toxic chemicals.

60. Each of the toxic chemical products to which Plaintiff, GEORGE FRANCO, was exposed, was manufactured and/or supplied by the foregoing defendants, as set forth above.

61. As a result of Plaintiff GEORGE FRANCO's exposure to the foregoing toxic chemical products, toxins within said toxic chemical products, including benzene, entered Plaintiff, GEORGE FRANCO's body.

62. Plaintiff, GEORGE FRANCO, suffers from a specific illness, to wit, meningioma, as well as other related and consequential injuries.

63. Each of the foregoing toxic chemical products caused Plaintiff, GEORGE FRANCO's meningioma and other injuries.

///

///

1 64. Each toxin that entered Plaintiff, GEORGE FRANCO's body was a substantial
2 factor in bringing about, prolonging, and/or aggravating Plaintiff, GEORGE FRANCO's
3 meningioma and other injuries.

4 65. As a direct and proximate result of said negligent acts and omissions of Defendants,
5 Plaintiff, GEORGE FRANCO, suffered from meningioma and other related and consequential
6 medical conditions.

7 66. As a direct and proximate result of said negligent acts and omissions of Defendants,
8 Plaintiffs have been required to expend money and incur obligations for medical and related
9 expenses in an amount not yet determined but which is well in excess of the jurisdictional
10 minimum of the Court, and Plaintiff, GEORGE FRANCO, has been unable to attend to his usual
11 employment and activities.

12 67. As a further direct and proximate result of the negligent acts and omissions of
13 defendants resulting in his severe toxic injuries, Plaintiff, GEORGE FRANCO, has suffered lost
14 income and will continue to suffer loss of future income, support and maintenance, all to
15 Plaintiff's damage in a sum to be established according to proof.

16 68. As a further direct and proximate result of the actions and inactions of defendants
17 resulting in severe toxic injuries, Plaintiff, GEORGE FRANCO, has suffered and will continue
18 to suffer general damages to be established according to proof at trial.

19
20 **SECOND CAUSE OF ACTION FOR STRICT LIABILITY - WARNING DEFECT**

21 (By Plaintiff, GEORGE FRANCO, Against All Named Defendants and Does 1-100)

22 69. Plaintiffs refer to paragraphs 1 through 68 and, by this reference, incorporate said
23 paragraphs hereat as though set forth in full.

24 70. At all times mentioned herein, defendants were the importers, producers, and
25 distributors of chemical products which were delivered to or used at Plaintiff's place of
26 employment in San Bernardino County, California, where Plaintiff, GEORGE FRANCO, was
27 exposed to them.

1 71. The chemical products which Defendants imported, produced, and distributed to
2 Plaintiff's place of employment in San Bernardino County, California, were defective, because
3 they lacked warnings adequate to apprise Plaintiff of their toxic hazards and their serious effects
4 upon the human body, and they lacked instructions for handling and use adequate to prevent
5 exposures to Plaintiff causing serious injuries and disease.

6 72. Plaintiff, GEORGE FRANCO, was exposed to each of the foregoing toxic
7 chemicals.

8 73. Each of the toxic chemical products to which Plaintiff, GEORGE FRANCO, was
9 exposed, was manufactured and/or supplied by the foregoing defendants, as set forth above.

10 74. As a result of Plaintiff GEORGE FRANCO's exposure to the foregoing toxic
11 chemical products, toxins within said toxic chemical products, including benzene, entered
12 Plaintiff, GEORGE FRANCO's body.

13 75. Plaintiff, GEORGE FRANCO, suffers from a specific illness, to wit, meningioma,
14 as well as other related and consequential injuries.

15 76. Each of the foregoing toxic chemical products caused Plaintiff, GEORGE
16 FRANCO's meningioma and other injuries.

17 77. Each toxin that entered Plaintiff, GEORGE FRANCO's body was a substantial
18 factor in bringing about, prolonging, and/or aggravating Plaintiff, GEORGE FRANCO's
19 meningioma and other injuries.

20 78. As a direct and proximate result of the defective warnings of Defendants' chemical
21 products, Plaintiff, GEORGE FRANCO, suffered from meningioma and other related and
22 consequential medical conditions.

23 79. As a direct and proximate result of the defective warnings of Defendants' chemical
24 products, Plaintiffs have been required to expend money and incur obligations for medical and
25 related expenses in an amount not yet determined but which is well in excess of the jurisdictional
26
27
28

1 minimum of the Court, and Plaintiff, GEORGE FRANCO, has been unable to attend to his usual
2 employment and activities.

3 80. As a further direct and proximate result of the defective warnings of Defendants'
4 chemical products, Plaintiff, GEORGE FRANCO, has suffered lost income and will continue to
5 suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be
6 established according to proof.

7 81. As a further direct and proximate result of defective warnings of Defendants'
8 chemical products, Plaintiff, GEORGE FRANCO, has suffered and will continue to suffer
9 general damages according to proof at trial.

10 82. In exposing Plaintiff to said toxic chemicals, Defendants failed to warn Plaintiff
11 of known dangers, consciously disregarded Plaintiff's safety despite knowledge of the probable
12 dangerous consequences of their chemicals, and willfully and deliberately failed to avoid said
13 dangerous consequences befalling Plaintiff. Defendants were either aware of, or culpably
14 indifferent to, unnecessary risks of injury to Plaintiff and failed and refused to take steps to
15 eliminate or adequately reduce the risk of said dangerous consequences to Plaintiff. Defendants
16 concealed known toxic hazards of their chemicals from Plaintiff, specifically by failing to warn
17 Plaintiff of adverse toxic effects of their chemicals, and such hazards were known by and such
18 concealment was ratified by the corporate officers and managers of each of the defendants.
19 Defendants consciously decided to market their chemical products with knowledge of their
20 harmful effects and without remedying the toxic effects of their chemicals, and such marketing
21 despite knowledge of the foregoing toxic hazards of Defendants' products was ratified by the
22 corporate officers and managers of each of the defendants. Defendants also misrepresented the
23 nature of their chemical products, by withholding information from Plaintiff regarding toxic
24 chemicals released from their products during their anticipated or reasonably foreseeable uses,
25 and such misrepresentation and withholding of information was ratified by the corporate officers
26 and managers of each of the defendants.
27
28

1 83. Safety-Kleen has known for years that its "recycled" Safety-Kleen 105 Solvent
2 contains benzene.

3 84. Safety-Kleen has also known for years that benzene and other chlorinated
4 compounds found in recycled Safety-Kleen 105 Solvent cause cancer and other serious health
5 risks and diseases.

6 85. In the early 1990s, Paul Dittmar, Safety-Kleen's Product and Process Development
7 Manager, was assigned the task of determining the extent of the solvent contamination problem
8 and identifying remedial technologies. In a memo addressed to the company's general counsel,
9 Mr. Dittmar concluded that the solvent contamination problem was a major problem. He
10 determined that a number of different technologies existed to resolve the problem, but that the
11 best and simplest technology was fractional distillation -- technology which has been used to
12 refine crude oil since the turn of the century.

13 86. Mr. Dittmar determined that the use of such technology would totally eliminate
14 benzene from the recycled product and reduce the chlorinated content of the solvent by 90%. Mr.
15 Dittmar, who is not only a chemist but also holds a Masters Degree in Business Administration,
16 then proceeded to determine the cost of implementing fractional distillation technology at Safety-
17 Kleen's domestic recycling centers. He determined that the cost of installation of the fractional
18 distillation equipment would only be about \$1 million for each of the company's half-dozen
19 recycling facilities and that the additional cost of processing the solvent would be about 2 to 4
20 cents per gallon.

21 87. Although Safety-Kleen was aware that its recycling process was defective and that
22 it could be easily remedied for a capital expenditure of \$1 million for each of its half-dozen
23 recycling facilities (about ½ of one percent of its annual gross revenues) and a cost of about 3
24 cents per gallon (which could easily have been passed on to its customers), Safety-Kleen did not
25 install fractional distillation equipment at its recycle centers.
26
27
28

1 88. Although Safety-Kleen was aware that the benzene and chlorinated compounds in
2 its recycled Safety-Kleen 105 Solvent caused cancer and other health problems and diseases, and
3 knew of a cost-efficient method of removing these cancer-causing substances from Safety-Kleen
4 105 Solvent, Safety-Kleen instead chose to continue marketing its solvent without warnings
5 regarding the cancer hazards of the product, and without remedying such hazards.

6 89. Safety-Kleen did not list carcinogens present in Safety-Kleen 105 Solvent if the
7 carcinogen was at levels below 0.1 percent, in a further effort to lead customers and users to
8 believe the product was safe, when in fact it was not.

9 90. Safety-Kleen falsely told some people that its Safety-Kleen 105 Solvent contains
10 no benzene, and told other people benzene was not an "ingredient" of Safety-Kleen 105 Solvent
11 to mislead people into believing there was no benzene in Safety-Kleen 105 Solvent. To further
12 this, for many years Safety-Kleen chose not to list benzene on its parts washer machine labels to
13 further convince customers its product contained no benzene.

14 91. Without possessing any scientific or medical proof to establish the purported fact,
15 Safety-Kleen told customers that the amount of chlorinated compounds in Safety-Kleen 105
16 Solvent was so minuscule that it did not create any health hazards.

17 92. Safety-Kleen was aware of the toxic hazards of its 105 Solvent as demonstrated
18 by the fact that Safety-Kleen required its employees who worked with the 105 Solvent to wear
19 protective gear including a full chemical suit, gloves, boots and a respirator, and mandated
20 medical testing for liver, kidney and blood disease every one to two years for those employees.

21 93. Safety-Kleen's recycling process increased the levels of chlorinated compounds
22 (e.g., perc) in Safety-Kleen 105 Solvent that Safety-Kleen distributed for use by its customers,
23 thereby making it more harmful and toxic.

24 94. Safety-Kleen's own products contributed to the contamination of Safety-Kleen 105
25 Solvent, thereby making it more toxic than it otherwise would have been.
26
27
28

1 95. Safety-Kleen's only concern regarding issues with its 105 Solvent (e.g., receiving
2 off-spec material below the flashpoint) was how such would affect Safety-Kleen's liability
3 position, rather than a concern for the health and safety of its customers or their employees.

4 96. In preparing its MSDS's, Safety-Kleen's only concern was that from a marketing
5 perspective, listing certain carcinogenic ingredients of its 105 Solvent on MSDS's would make
6 marketing the product more difficult. Safety-Kleen gave no consideration to the health and safety
7 of Safety-Kleen's customers or of their right to know of carcinogens in Safety-Kleen 105 Solvent.

8 97. For marketing reasons, Safety-Kleen wanted to get levels of carcinogens (e.g.,
9 perc) below OSHA levels so Safety-Kleen did not have to list those carcinogens on its material
10 safety data sheets, but Safety-Kleen decided not to spend the money to accomplish this, because
11 Safety-Kleen decided that it would not achieve a significant marketing benefit by being able not
12 to list carcinogens on the material safety data sheet for Safety-Kleen 105 Solvent.

13 98. Safety-Kleen could have removed perchloroethylene, benzene, and other
14 chlorinated compounds from Safety-Kleen 105 Solvent for nominal cost (2-4 cents per gallon)
15 through fractional distillation but chose not to do so unless and until governmental agencies
16 required Safety-Kleen to do such. This decision was made because Safety-Kleen's marketing
17 department determined that removal of these compounds would not provide a sufficient
18 marketing benefit to justify making the product safe.

19 99. Although detergent-based technology was available, affordable and marketable,
20 Safety-Kleen did not convert any of its solvent tanks to the less-toxic water-based cleaner until
21 required to do so by law.

22 100. Safety-Kleen is well aware that its 105 Solvent has contaminated multiple sites
23 where its recycle facilities are located across the country.

24 101. Multiple enforcement actions and fines have been imposed upon Safety-Kleen in
25 California and elsewhere due to environmental non-compliance issues and Safety-Kleen's
26 contamination of different sites in the United States.
27
28

1 102. As a condition of settling a leukemia case in the 1980s, (the Junker case), Safety-
2 Kleen required that all evidence and records be sealed by the court and destroyed by counsel to
3 conceal information, including scientific data, that had been discovered and developed during
4 the course of the litigation.

5 103. Despite receiving hundred of claims that Safety-Kleen 105 Solvent has caused
6 blood related cancers, other cancers, and systemic toxicity resulting in organ failure and death,
7 Safety-Kleen continues to market its 105 Solvent today.

8 104. Defendants' conduct in exposing Plaintiff to said toxic chemicals without adequate
9 warnings of their toxic hazards and without adequate instructions for safe handling and use was
10 despicable, malicious, oppressive, and perpetrated in conscious disregard of the rights and safety
11 of Plaintiffs, entitling Plaintiffs to punitive and exemplary damages.

12 **THIRD CAUSE OF ACTION FOR STRICT LIABILITY - DESIGN DEFECT**

13 **(By Plaintiff, GEORGE FRANCO, Against All Named Defendants and Does 1-100)**

14 105. Plaintiffs refer to paragraphs 1 through 104 and, by this reference, incorporate
15 said paragraphs herein as though set forth in full.

16 106. At all times mentioned herein, Defendants were the importers, producers, and
17 distributors of chemical products which were delivered to or used at Plaintiff's various places
18 of employment in San Bernardino County, California, where Plaintiff, GEORGE FRANCO,
19 was exposed to them.

20 107. Said chemical products were defective in their design because they failed to
21 perform as safely as an ordinary user would expect when used in an intended or reasonably
22 foreseeable manner, because the risks of using and being exposed to Defendants' products
23 outweighed the benefits of said products, and because safer feasible alternative designs existed
24 which would have made Defendants' products less harmful when used as intended.

25 108. Safety-Kleen's parts washer machines were defective in their design for at least
26 three reasons:
27
28

1 a. First, the machines lacked a local exhaust ventilation device to remove toxic
2 vapors from the solvent and prevent workers operating the machine from inhaling them. Such
3 devices have long been used in industry and a ventilation device could, and should, have been
4 designed as a standard part of the machine. Such a device would have substantially reduced
5 operator exposure to toxic solvent vapors by inhalation, the primary exposure hazard to the
6 solvent. Of course, a more sophisticated device such as a horizontal laminar airflow hood would
7 have totally eliminated respiratory exposure to the solvent. Such devices have commonly been
8 used in hazardous industrial applications since the early 1980s.

9 b. Second, the machines lacked a barrier to prevent solvent from splashing onto
10 machine operators. The ordinary operation of the machine as intended results in much splashing
11 of solvent on operators' arms, face, neck and upper torso. This exposure presents a substantial
12 skin absorption hazard. A simple plastic barrier slightly above the lip of the sink on the front of
13 the machine (with space below for the operator to insert his hands to degrease parts) could
14 prevent the splashing of solvent on exposed areas of workers' bodies. Of course, a more
15 sophisticated devices than a plastic barrier, such as a glove box, would have provided even
16 greater dermal protection.

17 c. Third, the machines lacked a cyclonic separator or other solvent-purifying device.
18 A cyclonic separator is a device which filters solid particles out of contaminated solvent by
19 means of centrifugal force, trapping the particles in a chamber for removal. The cyclonic
20 separator reduces contamination of the solvent and customer exposure to certain toxins that
21 contaminate the solvent. It also reduces odors and emissions of volatile organic compounds and
22 even extends the useful life of the solvent. The cyclonic separator technology is hardly rocket
23 science and its effectiveness has been proven. Indeed, Safety-Kleen provides the device it to its
24 customers in a similar "green" machine for use with a less toxic solvent.

25
26 ///

27 ///

1 109. The recycled Safety-Kleen 105 Solvent is defective for at least two reasons:

2 a. First, it contains high levels of toxic and carcinogenic chlorinated solvents which
3 do not exist in virgin mineral spirits. Indeed, toxic chlorinated compounds accumulate and
4 concentrate in the solvent as these toxic chemicals are introduced into the solvent stream by
5 automotive customers at a rate greater than they are removed by carry-off and evaporation.

6 b. Second, the benzene content of the recycled solvent is substantially greater than
7 the benzene content of virgin mineral spirits, due to introduction of benzene-containing gasoline
8 into the solvent by customers.

9 110. Said design defects existed in Defendants' products when said products left
10 Defendants' possession.

11 111. As a direct and proximate result of said design defects, while using said chemical
12 products in a manner that was reasonably foreseeable and intended by Defendants, Plaintiff was
13 exposed to Defendants' chemical products in the course of his employment with various places
14 of employment in San Bernardino County, California, and has suffered serious injuries and
15 disease, including meningioma and other related medical conditions.

16 112. Plaintiff, GEORGE FRANCO, was exposed to each of the foregoing toxic
17 chemicals.

18 113. Each of the toxic chemical products to which Plaintiff, GEORGE FRANCO, was
19 exposed, was manufactured and/or supplied by the foregoing defendants, as set forth above.

20 114. As a result of Plaintiff GEORGE FRANCO's exposure to the foregoing toxic
21 chemical products, toxins within said toxic chemical products, including benzene, entered
22 Plaintiff, GEORGE FRANCO's body.

23 115. Plaintiff, GEORGE FRANCO, suffers from a specific illness, to wit, Convexity
24 meningioma, as well as other related and consequential injuries.

25 116. Each of the foregoing toxic chemical products caused Plaintiff, GEORGE
26 FRANCO's meningioma and other injuries.
27
28

1 117. Each toxin that entered Plaintiff, GEORGE FRANCO's body was a substantial
2 factor in bringing about, prolonging, and/or aggravating Plaintiff, GEORGE FRANCO's
3 meningioma and other injuries.

4 118. As a direct and proximate result of the defective design of Defendants' chemical
5 products, Plaintiff, GEORGE FRANCO, suffers from meningioma and other related and
6 consequential medical conditions.

7 119. As a direct and proximate result of the defective design of Defendants' chemical
8 products, Plaintiffs have been required to expend money and incur obligations for medical and
9 related expenses in an amount not yet determined but well in excess of the jurisdictional
10 minimum of this Court, and Plaintiff, GEORGE FRANCO, has been unable to attend to Plaintiff,
11 GEORGE FRANCO's usual employment and activities.

12 120. As a further direct and proximate result of the defective design of Defendants'
13 chemical products, Plaintiff, GEORGE FRANCO, has suffered lost income and will continue to
14 suffer loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be
15 established according to proof.

16 121. As a further direct and proximate result of defective nature of said chemical
17 products, Plaintiff, GEORGE FRANCO, has suffered and will continue to suffer general
18 damages according to proof at trial.

19 122. In exposing Plaintiff to said toxic chemicals, Defendants failed to warn Plaintiff
20 of known dangers, consciously disregarded Plaintiff's safety despite knowledge of the probable
21 dangerous consequences of their chemicals, and willfully and deliberately failed to avoid said
22 dangerous consequences befalling Plaintiff. Defendants were either aware of, or culpably
23 indifferent to, unnecessary risks of injury to Plaintiff and failed and refused to take steps to
24 eliminate or adequately reduce the risk of said dangerous consequences to Plaintiff. Defendants
25 concealed known toxic hazards of their chemicals from Plaintiff, specifically by failing to warn
26 Plaintiff of adverse toxic effects of their chemicals, and such hazards were known by and such
27
28

1 concealment was ratified by the corporate officers and managers of each of the defendants.
2 Defendants consciously decided to market their chemicals with knowledge of their harmful
3 effects and without remedying the toxic effects of their chemicals, and such marketing despite
4 knowledge of the foregoing toxic hazards of Defendants' products was ratified by the corporate
5 officers and managers of each of the defendants. Defendants also misrepresented the nature of
6 their chemical products, by withholding information from Plaintiff regarding toxic chemicals
7 released from their products during their anticipated or reasonably foreseeable uses, and such
8 misrepresentation and withholding of information was ratified by the corporate officers and
9 managers of each of the defendants.

10
11 123. Safety-Kleen has known for years that its "recycled" Safety-Kleen 105 Solvent
12 contains benzene.

13 124. Safety-Kleen has also known for years that benzene and other chlorinated
14 compounds found in recycled Safety-Kleen 105 Solvent cause cancer and other serious health
15 risks and diseases.

16 125. In the early 1990s, Paul Dittmar, Safety-Kleen's Product and Process Development
17 Manager, was assigned the task of determining the extent of the solvent contamination problem
18 and identifying remedial technologies. In a memo addressed to the company's general counsel,
19 Mr. Dittmar concluded that the solvent contamination problem was a major problem. He
20 determined that a number of different technologies existed to resolve the problem, but that the
21 best and simplest technology was fractional distillation -- technology which has been used to
22 refine crude oil since the turn of the century.

23 126. Mr. Dittmar determined that the use of such technology would totally eliminate
24 benzene from the recycled product and reduce the chlorinated content of the solvent by 90%. Mr.
25 Dittmar, who is not only a chemist but also holds a master's degree in business administration,
26 then proceeded to determine the cost of implementing fractional distillation technology at Safety-
27 Kleen's domestic recycling centers. He determined that the cost of installation of the fractional
28

1 distillation equipment would only be about \$1 million for each of the company's half-dozen
2 recycling facilities and that the additional cost of processing the solvent would be about 2 to 4
3 cents per gallon.

4 127. Although Safety-Kleen was aware that its recycling process was defective and that
5 it could be easily remedied for a capital expenditure of \$1 million for each of its half-dozen
6 recycling facilities (about ½ of one percent of its annual gross revenues) and a cost of about 3
7 cents per gallon (which could easily have been passed on to its customers), Safety-Kleen did not
8 install fractional distillation equipment at its recycle centers.

9 128. Although Safety-Kleen was aware that the benzene and chlorinated compounds in
10 its recycled Safety-Kleen 105 Solvent caused cancer and other health problems and diseases, and
11 knew of a cost-efficient method of removing these cancer-causing substances from Safety-Kleen
12 105 Solvent, Safety-Kleen instead chose to continue marketing its solvent without warnings
13 regarding the cancer hazards of the product, and without remedying such hazards.

14 129. Safety-Kleen did not list carcinogens present in Safety-Kleen 105 Solvent if the
15 carcinogen was at levels below 0.1 percent, in a further effort to lead customers and users to
16 believe the product was safe, when in fact it was not.

17 130. Safety-Kleen falsely told some people that its Safety-Kleen 105 Solvent contains
18 no benzene, and told other people benzene was not an "ingredient" of Safety-Kleen 105 Solvent
19 to mislead people into believing there was no benzene in Safety-Kleen 105 Solvent. To further
20 this, for many years Safety-Kleen chose not to list benzene on its parts washer machine labels to
21 further convince customers its product contained no benzene.

22 131. Without possessing any scientific or medical proof to establish the purported fact,
23 Safety-Kleen told customers that the amount of chlorinated compounds in Safety-Kleen 105
24 Solvent was so minuscule that it did not create any health hazards.

25 132. Safety-Kleen was aware of the toxic hazards of its 105 Solvent as demonstrated
26 by the fact that Safety-Kleen required its employees who worked with the 105 Solvent to wear
27
28

1 protective gear including a full chemical suit, gloves, boots and a respirator, and mandated
2 medical testing for liver, kidney and blood disease every one to two years for those employees.

3 133. Safety-Kleen's recycling process increased the levels of chlorinated compounds
4 (e.g., perc) in Safety-Kleen 105 Solvent that Safety-Kleen distributed for use by its customers,
5 thereby making it more harmful and toxic.

6 134. Safety-Kleen's own products contributed to the contamination of Safety-Kleen 105
7 Solvent, thereby making it more toxic than it otherwise would have been.

8 135. Safety-Kleen's only concern regarding issues with its 105 Solvent (e.g., receiving
9 off-spec material below the flashpoint) was how such would affect Safety-Kleen's liability
10 position, rather than a concern for the health and safety of its customers or their employees.

11 136. In preparing its MSDS's, Safety-Kleen's only concern was that from a marketing
12 perspective, listing certain carcinogenic ingredients of its 105 Solvent on MSDS's would make
13 marketing the product more difficult. Safety-Kleen gave no consideration to the health and safety
14 of Safety-Kleen's customers or of their right to know of carcinogens in Safety-Kleen 105 Solvent.

15 137. For marketing reasons, Safety-Kleen wanted to get levels of carcinogens (e.g.,
16 perc) below OSHA levels so Safety-Kleen did not have to list those carcinogens on its material
17 safety data sheets, but Safety-Kleen decided not to spend the money to accomplish this, because
18 Safety-Kleen decided that it would not achieve a significant marketing benefit by being able not
19 to list carcinogens on the material safety data sheet for Safety-Kleen 105 Solvent.

20 138. Safety-Kleen could have removed perchloroethylene, benzene, and other
21 chlorinated compounds from Safety-Kleen 105 Solvent for nominal cost (2-4 cents per gallon)
22 through fractional distillation, but chose not to do so unless and until governmental agencies
23 required Safety-Kleen to do such. This decision was made because Safety-Kleen's marketing
24 department determined that removal of these compounds would not provide a sufficient
25 marketing benefit to justify making the product safe.
26
27
28

1 139. Although detergent-based technology was available, affordable and marketable,
2 Safety-Kleen did not convert any of its solvent tanks to the less-toxic water-based cleaner until
3 required to do so by law.

4 140. Safety-Kleen engaged in numerous unethical and improper behaviors in California,
5 including fraudulently billing customers for services not performed and products not provided,
6 falsely representing the nature of its parts washer machine to customers in violation of state and
7 federal consumer protection laws, and replacing used solvent in such a way that it risked the
8 health and safety of Safety-Kleen's customers and employees.

9 141. Safety-Kleen is well aware that its 105 Solvent has contaminated multiple sites
10 where its recycle facilities are located across the country.

11 142. Multiple enforcement actions and fines have been imposed upon Safety-Kleen in
12 California and elsewhere due to environmental non-compliance issues and Safety-Kleen's
13 contamination of different sites in the United States.

14 143. As a condition of settling a leukemia case in the 1980s, (the Junker case), Safety-
15 Kleen required that all evidence and records be sealed by the court and destroyed by counsel to
16 conceal information, including scientific data, that had been discovered and developed during
17 the course of the litigation.

18 144. Despite receiving hundred of claims that Safety-Kleen 105 Solvent has caused
19 blood related cancers, other cancers, and systemic toxicity resulting in organ failure and death,
20 Safety-Kleen continues to market its 105 Solvent today.

21 145. Defendants' conduct in exposing Plaintiff to said toxic chemicals without adequate
22 warnings of their toxic hazards and without adequate instructions for safe handling and use was
23 despicable, malicious, oppressive, and perpetrated in conscious disregard of the rights and safety
24 of Plaintiffs, entitling Plaintiffs to punitive and exemplary damages.

25
26 ///

27 ///

FOURTH CAUSE OF ACTION FOR FRAUDULENT CONCEALMENT

(By Plaintiff, GEORGE FRANCO, Against All Named Defendants and Does 1-100)

146. Plaintiffs refer to paragraphs 1 through 145 and, by this reference, incorporate said paragraphs herein in full.

147. At all times mentioned herein, Defendants were the importers, producers, and distributors of chemical products which were delivered to or used at Plaintiff's place of employment in San Bernardino, California, where Plaintiff, GEORGE FRANCO, was exposed to them.

148. Defendants' chemical products to which Plaintiff was exposed are toxic.

149. Defendants were aware of the toxic nature of their products.

150. Pursuant to the Hazard Communication Standard and California common law, Defendants were under a legal duty to fully disclose the toxic properties of their products directly to Plaintiff.

151. Notwithstanding their knowledge of the toxic properties of their chemical products, at all material times hereto, Defendants concealed said toxic hazards from Plaintiff, GEORGE FRANCO, so that Plaintiff, GEORGE FRANCO, would use Defendants' chemical products.

152. Plaintiff, GEORGE FRANCO, was unaware of the toxic hazards of Defendants' chemicals and would not have acted as he did had he known of said concealed hazards.

153. As a direct and proximate result of Defendants' fraudulent concealment of the toxic hazards of their chemical products, Plaintiff, GEORGE FRANCO, was exposed to Defendants' chemical products in the course of his employment with various places of employment in Los Angeles County, California, and has suffered serious injuries and disease, including Convexity meningioma and other related medical conditions.

154. Plaintiff, GEORGE FRANCO, was exposed to each of the foregoing toxic chemicals.

1 155. Each of the toxic chemical products to which Plaintiff, GEORGE FRANCO, was
2 exposed, was manufactured and/or supplied by the foregoing defendants, as set forth above.

3 156. As a result of Plaintiff GEORGE FRANCO's exposure to the foregoing toxic
4 chemical products, toxins within said toxic chemical products, including benzene, entered
5 Plaintiff, GEORGE FRANCO's body.

6 157. Plaintiff, GEORGE FRANCO, suffers from a specific illness, to wit, meningioma,
7 as well as other related and consequential injuries.

8 158. Each of the foregoing toxic chemical products caused Plaintiff, GEORGE
9 FRANCO's meningioma another injuries.

10 159. Each toxin that entered Plaintiff, GEORGE FRANCO's body was a substantial
11 factor in bringing about, prolonging, and/or aggravating Plaintiff, GEORGE FRANCO's
12 meningioma and other injuries.

13 160. As a direct and proximate result of Defendants' fraudulent concealment of the toxic
14 hazards of their chemicals, Plaintiff, GEORGE FRANCO, suffers from meningioma and other
15 related and consequential medical conditions.

16 161. As a direct and proximate result of Defendants' fraudulent concealment of the toxic
17 hazards of their chemicals, Plaintiffs have been required to expend money and incur obligations
18 for medical and related expenses in an amount not yet determined but which is well in excess of
19 the jurisdictional minimum of the Court, and Plaintiff, GEORGE FRANCO, has been unable to
20 attend to his usual employment and activities.

21 162. As a further direct and proximate result of Defendants' fraudulent concealment of
22 the toxic hazards of their chemical products, Plaintiff, GEORGE FRANCO, has suffered lost
23 income and will continue to suffer loss of future income, support and maintenance, all to
24 Plaintiff's damage in a sum to be established according to proof.
25

1 163. As a further direct and proximate result of Defendants' fraudulent concealment of
2 the toxic hazards of their chemical products, Plaintiff, GEORGE FRANCO, has suffered and
3 will continue to suffer general damages to be established according to proof at trial.

4 164. In exposing Plaintiff to said toxic chemicals, Defendants failed to warn Plaintiff
5 of known dangers, consciously disregarded Plaintiff's safety despite knowledge of the probable
6 dangerous consequences of their chemicals, and willfully and deliberately failed to avoid said
7 dangerous consequences befalling Plaintiff. Defendants were either aware of, or culpably
8 indifferent to, unnecessary risks of injury to Plaintiff and failed and refused to take steps to
9 eliminate or adequately reduce the risk of said dangerous consequences to Plaintiff. Defendants
10 concealed known toxic hazards of their chemicals from Plaintiff, specifically by failing to warn
11 Plaintiff of adverse toxic effects of their chemicals, and such hazards were known by and such
12 concealment was ratified by the corporate officers and managers of each of the defendants.
13 Defendants consciously decided to market their chemicals with knowledge of their harmful
14 effects and without remedying the toxic effects of their chemicals, and such marketing despite
15 knowledge of the foregoing toxic hazards of Defendants' products was ratified by the corporate
16 officers and managers of each of the defendants. Defendants also misrepresented the nature of
17 their chemical products, by withholding information from Plaintiff regarding toxic chemicals
18 released from their products during their anticipated or reasonably foreseeable uses, and such
19 misrepresentation and withholding of information was ratified by the corporate officers and
20 managers of each of the defendants.
21

22 165. Safety-Kleen has known for years that its "recycled" Safety-Kleen 105 Solvent
23 contains benzene.

24 ///

25 ///

1 166. Safety-Kleen has also known for years that benzene and other chlorinated
2 compounds found in recycled Safety-Kleen 105 Solvent cause cancer and other serious health
3 risks and diseases.

4 167. In the early 1990s, Paul Dittmar, Safety-Kleen's Product and Process Development
5 Manager, was assigned the task of determining the extent of the solvent contamination problem
6 and identifying remedial technologies. In a memo addressed to the company's general counsel,
7 Mr. Dittmar concluded that the solvent contamination problem was a major problem. He
8 determined that a number of different technologies existed to resolve the problem, but that the
9 best and simplest technology was fractional distillation -- technology which has been used to
10 refine crude oil since the turn of the century.

11 168. Mr. Dittmar determined that the use of such technology would totally eliminate
12 benzene from the recycled product and reduce the chlorinated content of the solvent by 90%. Mr.
13 Dittmar, who is not only a chemist but also holds a Masters Degree in Business Administration,
14 then proceeded to determine the cost of implementing fractional distillation technology at Safety-
15 Kleen's domestic recycling centers. He determined that the cost of installation of the fractional
16 distillation equipment would only be about \$1 million for each of the company's half-dozen
17 recycling facilities and that the additional cost of processing the solvent would be about 2 to 4
18 cents per gallon.

19 169. Although Safety-Kleen was aware that its recycling process was defective and that
20 it could be easily remedied for a capital expenditure of \$1 million for each of its half-dozen
21 recycling facilities (about ½ of one percent of its annual gross revenues) and a cost of about 3
22 cents per gallon (which could easily have been passed on to its customers), Safety-Kleen did not
23 install fractional distillation equipment at its recycle centers.

24 170. Although Safety-Kleen was aware that the benzene and chlorinated compounds in
25 its recycled Safety-Kleen 105 Solvent caused cancer and other health problems and diseases, and
26 knew of a cost-efficient method of removing these cancer-causing substances from Safety-Kleen
27
28

1 105 Solvent, Safety-Kleen instead chose to continue marketing its solvent without warnings
2 regarding the cancer hazards of the product, and without remedying such hazards.

3 171. Safety-Kleen did not list carcinogens present in Safety-Kleen 105 Solvent if the
4 carcinogen was at levels below 0.1 percent, in a further effort to lead customers and users to
5 believe the product was safe, when in fact it was not.

6 172. Safety-Kleen falsely told some people that its Safety-Kleen 105 Solvent contains
7 no benzene, and told other people benzene was not an "ingredient" of Safety-Kleen 105 Solvent
8 to mislead people into believing there was no benzene in Safety-Kleen 105 Solvent. To further
9 this, for many years Safety-Kleen chose not to list benzene on its parts washer machine labels to
10 further convince customers its product contained no benzene.

11 173. Without possessing any scientific or medical proof to establish the purported fact,
12 Safety-Kleen told customers that the amount of chlorinated compounds in Safety-Kleen 105
13 Solvent was so minuscule that it did not create any health hazards.

14 174. Safety-Kleen was aware of the toxic hazards of its 105 Solvent as demonstrated
15 by the fact that Safety-Kleen required its employees who worked with the 105 Solvent to wear
16 protective gear including a full chemical suit, gloves, boots and a respirator, and mandated
17 medical testing for liver, kidney and blood disease every one to two years for those employees.

18 175. Safety-Kleen's recycling process increased the levels of chlorinated compounds
19 (e.g., perc) in Safety-Kleen 105 Solvent that Safety-Kleen distributed for use by its customers,
20 thereby making it more harmful and toxic.

21 176. Safety-Kleen's own products contributed to the contamination of Safety-Kleen 105
22 Solvent, thereby making it more toxic than it otherwise would have been.

23 177. Safety-Kleen's only concern regarding issues with its 105 Solvent (e.g., receiving
24 off-spec material below the flashpoint) was how such would affect Safety-Kleen's liability
25 position, rather than a concern for the health and safety of its customers or their employees.
26
27
28

1 178. In preparing its MSDS's, Safety-Kleen's only concern was that from a marketing
2 perspective, listing certain carcinogenic ingredients of its 105 Solvent on MSDS's would make
3 marketing the product more difficult. Safety-Kleen gave no consideration to the health and safety
4 of Safety-Kleen's customers or of their right to know of carcinogens in Safety-Kleen 105 Solvent.

5 179. For marketing reasons, Safety-Kleen wanted to get levels of carcinogens (e.g.,
6 perc) below OSHA levels so Safety-Kleen did not have to list those carcinogens on its material
7 safety data sheets, but Safety-Kleen decided not to spend the money to accomplish this, because
8 Safety-Kleen decided that it would not achieve a significant marketing benefit by being able not
9 to list carcinogens on the material safety data sheet for Safety-Kleen 105 Solvent.

10 180. Safety-Kleen could have removed perchloroethylene, benzene, and other
11 chlorinated compounds from Safety-Kleen 105 Solvent for nominal cost (2-4 cents per gallon)
12 through fractional distillation, but chose not to do so unless and until governmental agencies
13 required Safety-Kleen to do such. This decision was made because Safety-Kleen's marketing
14 department determined that removal of these compounds would not provide a sufficient
15 marketing benefit to justify making the product safe.

16 181. Although detergent-based technology was available, affordable and marketable,
17 Safety-Kleen did not convert any of its solvent tanks to the less-toxic water-based cleaner until
18 required to do so by law.

19 182. Safety-Kleen engaged in numerous unethical and improper behaviors in California,
20 including fraudulently billing customers for services not performed and products not provided,
21 falsely representing the nature of its parts washer machine to customers in violation of state and
22 federal consumer protection laws, and replacing used solvent in such a way that it risked the
23 health and safety of Safety-Kleen's customers and employees.

24 183. Safety-Kleen is well aware that its 105 Solvent has contaminated multiple sites
25 where its recycle facilities are located across the country.
26
27
28

1 184. Multiple enforcement actions and fines have been imposed upon Safety-Kleen in
2 California and elsewhere due to environmental non-compliance issues and Safety-Kleen's
3 contamination of different sites in the United States.

4 185. As a condition of settling a leukemia case in the 1980s, (the Junker case), Safety-
5 Kleen required that all evidence and records be sealed by the court and destroyed by counsel to
6 conceal information, including scientific data, that had been discovered and developed during
7 the course of the litigation.

8 186. Despite receiving hundred of claims that Safety-Kleen 105 Solvent has caused
9 blood related cancers, other cancers, and systemic toxicity resulting in organ failure and death,
10 Safety-Kleen continues to market its 105 Solvent today.

11 187. Defendants' conduct in exposing Plaintiff to said toxic chemicals without adequate
12 warnings of their toxic hazards and without adequate instructions for safe handling and use was
13 despicable, malicious, oppressive, and perpetrated in conscious disregard of the rights and safety
14 of Plaintiffs, entitling Plaintiffs to punitive and exemplary damages.

15 **FIFTH CAUSE OF ACTION FOR BREACH OF IMPLIED WARRANTIES**

16 **(By Plaintiff, GEORGE FRANCO, Against All Named Defendants and Does 1-100)**

17 188. Plaintiffs refer to paragraphs 1 through 187 and, by this reference, incorporate said
18 paragraphs herein as though set forth in full.

19 189. At all times mentioned herein, Defendants were the importers, producers, and
20 distributors of chemical products which were purchased by Plaintiff and delivered to or used at
21 Plaintiff's place of employment in San Bernardino, California, where Plaintiff, GEORGE
22 FRANCO, was exposed to them.

23 190. Defendants' chemical products to which Plaintiff was exposed are toxic.

24 191. By placing their chemical products in the stream of commerce, Defendants
25 impliedly warranted that their chemical products were reasonably fit for their intended uses, that
26 their chemical products were of merchantable quality, that they were not defective, that they
27
28

1 would function as safely as ordinary users would expect when used in an intended or reasonably
2 foreseeable manner, and that they would not cause serious disease, harm, or death.

3 192. Defendants, and each of them, breached said implied warranties, because their
4 toxic chemical products were not reasonably fit for their intended uses, were not of merchantable
5 quality, were defective, and failed to function as safely as an ordinary user would expect when
6 used in an intended or reasonably foreseeable manner, and caused serious injuries to Plaintiff,
7 GEORGE FRANCO, to wit, meningioma and the other injuries described herein.

8 193. Plaintiff, GEORGE FRANCO, was exposed to each of the foregoing toxic
9 chemicals.

10 194. Each of the toxic chemical products to which Plaintiff, GEORGE FRANCO, was
11 exposed, was manufactured and/or supplied by the foregoing defendants, as set forth above.

12 195. As a result of Plaintiff GEORGE FRANCO's exposure to the foregoing toxic
13 chemical products, toxins within said toxic chemical products, including benzene, entered
14 Plaintiff, GEORGE FRANCO's body.

15 196. Plaintiff, GEORGE FRANCO, suffers from a specific illness, to wit, meningioma,
16 as well as other related and consequential injuries.

17 197. Each of the foregoing toxic chemical products caused Plaintiff, GEORGE
18 FRANCO's Convexity meningioma another injuries.

19 198. Each toxin that entered Plaintiff, GEORGE FRANCO's body was a substantial
20 factor in bringing about, prolonging, and/or aggravating Plaintiff, GEORGE FRANCO's
21 Convexity meningioma and other injuries.

22 199. As a direct and proximate result of Defendants' breaches of implied warranties,
23 Plaintiff, GEORGE FRANCO, has suffered serious injuries and disease, including Convexity
24 meningioma and other related and consequential medical conditions.

25 200. As a direct and proximate result of Defendants' breaches of implied warranties,
26 Plaintiffs have been required to expend money and incur obligations for medical and related
27
28

1 expenses in an amount not yet determined but well in excess of the jurisdictional minimum of
2 the Court, and Plaintiff, GEORGE FRANCO, has been unable to attend to his usual
3 employment and activities.

4 As a further direct and proximate result of Defendants' breaches of implied
5 warranties, Plaintiff, GEORGE FRANCO, has suffered lost income and will continue to suffer
6 loss of future income, support and maintenance, all to Plaintiff's damage in a sum to be established
7 according to proof.
8

9 As a further direct and proximate result of Defendants' breaches of implied warranties,
10 Plaintiff, GEORGE FRANCO, has suffered and will continue to suffer general damages
11 according to proof at trial.
12

13 SIXTH CAUSE OF ACTION FOR LOSS OF CONSORTIUM

14 (By Plaintiff, KARLA FRANCO, Against All Named Defendants and Does 1-100)

15 201. Plaintiffs refer to paragraphs 1 through 200 and, by this reference, incorporate said
16 paragraphs herein in full.

17 202. At all material times hereto, Plaintiffs GEORGE FRANCO and KARLA
18 FRANCO, have been living together as husband and wife.

19 203. As a direct and proximate result of Defendants' above-described conduct and
20 Defendants' defective chemical products, Plaintiff, KARLA FRANCO, has lost and been
21 deprived of the services, love, companionship, comfort, affection, society, sexual relations, and
22 solace of Plaintiff, GEORGE FRANCO, all to the special and general damage of Plaintiff
23 KARLA FRANCO. Plaintiff anticipates further loss of consortium in the future.

24 ///

25 ///

26 ///

27 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgement as follows:

- 3 1. For general damages in a sum in excess of the minimum jurisdictional amount of the
4 court;
5 2. For medical expenses according to proof;
6 3. For post-judgment interest allowed by law;
7 4. For punitive damages according to proof;
8 5. For Plaintiffs' costs of suit incurred herein; and,
9 6. For such other and further relief as the Court deems just and proper.
10

11 DATED: June 2, 2023

TRIAL LAWYERS FOR JUSTICE

13 By: Brian Ward

14 BRIAN WARD, ESQ.
15 ERIN POWERS, ESQ.
16 Attorneys for Plaintiff
17 GEORGE FRANCO
18
19
20
21
22
23
24
25
26
27
28

RECEIVED
JUN 05 2023

SUPERIOR COURT OF CALIFORNIA
SAN BERNARDINO DISTRICT